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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,551	11/20/2003	Darryl P. Klein	W-9652-01	3546

7590 06/03/2005

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EXAMINER

WOOD, ELIZABETH D

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/719,551

Applicant(s)

KLEIN, DARRYL P.

Examiner

Elizabeth D. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-100 is/are pending in the application.
- 4a) Of the above claim(s) 1-23, 53-79 and 89-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-52 and 80-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 12/10/04.
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### ***Specification***

The examiner has not checked the specification to the extent necessary to determine the presence of **all** possible minor errors (grammatical, typographical and idiomatic). Cooperation of the applicant(s) is requested in correcting any errors of which applicant(s) may become aware of in the specification, in the claims and in any future amendment(s) that applicant(s) may file.

Applicant(s) is also requested to complete the status of any copending applications referred to in the specification by their Attorney Docket Number or Application Serial Number, **if any**.

The status of the parent application(s) and/or any other application(s) cross-referenced to this application, **if any**, should be updated in a timely manner.

### ***Election/Restrictions***

Claims 1-23, 53-79 and 89-100 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 6, 2005.

### ***Declaration***

The examiner notes the declaration under 37 CFR 1.132 and the article provided therewith. The examiner is satisfied that the combined information provided by applicant demonstrates adequately that both the error and the correction thereof would

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have been obvious to the skilled artisan. Accordingly, such correction does not constitute new matter.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are indefinite in that they recite a composition "for use" in making a catalyst. However, the claims actually place the composition on a carrier. Accordingly, this composition would appear to be an active catalyst and is being so treated for the purposes of both restriction and examination. Applicant will note that this method of making the catalyst was grouped with the catalyst for purposes of restriction because a review of the specification would indicate that employing this method results in the claimed composition.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 24-52 and 80-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,287,280 to Colgan et al. or US 4,500,424 to Simpson et al.

The instantly claimed invention involves a method for impregnating a support material with a solution of catalytically active metal components, and the composition apparently obtained by such method.

Colgan et al. and Simpson et al. both disclose typical support materials such as alumina, silica alumina and so forth. With respect to the characteristics of the foraminiferous carriers claimed by applicant, they appear no different from those known in the art for multimetallic catalysts and would therefore be expected to share the same characteristics as the compositions of the prior art absent some convincing evidence to the contrary. See particularly column 2 of Colgan et al. Insofar as pore diameter is concerned, such is a result-effective variable and the skilled artisan would be expected to select an appropriate pore sizes. The applied prior art of record teaches that the pore size claimed herein is no more than conventional. See, for example the abstract of the Simpson et al. disclosure. Additional evidence is present in other documents provided

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by applicant. See, for example, US 4,818,743 to Simpson et al. and US 5,498,586 to Dai et al. The applied references further teach Group VI metals, Group VIII metals and phosphorus in amounts overlapping those claimed herein. Accordingly, there appears little distinction between the herein claimed composition and those catalysts disclosed by Colgan and Simpson.

Regarding the process for making the composition, each of the applied references discloses carriers, components and necessary proportions that do not appear to differ substantially from those claimed by applicant. The main difference between the claimed process and that of the references is the claimed requirement that the Group VIII impregnant be insoluble in water. The references make no mention of this limitation; however, Simpson et al. discloses a carbonate impregnant, identified by applicant as insoluble (Note, however that Simpson defines this as a **soluble** material). See column 7 of Simpson et al. The examiner considers that any impregnant would have been obvious in this process, however, because the significance of selection cannot be determined. As a solution is made by adding the phosphorus component prior and the other metal prior to introduction of the Group VIII metal, the solubility of the substance in water is really not relevant as long as it is soluble or can be dispersed to some degree in the final impregnant solution. Both references teach this to be the final result. Accordingly, Such limitation would not appear to lend patentable moment to the process under examination. See also columns 3 and 4 of Colgan et al.

The limitations of all claims have been considered and are deemed to be within the purview of the prior art.

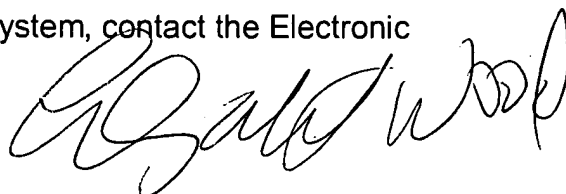
**Conclusion**

Applicants are advised that any evidence to be provided under 37 CFR 1.131 or 1.132 and any amendments to the claims and specification should be submitted prior to final rejection to be considered timely. It is anticipated that the next office action will be a final rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth D. Wood whose telephone number is 571-272-1377. The examiner can normally be reached on M-F, 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth D. Wood  
Primary Examiner  
Art Unit 1755